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MARGARET A. ROY, Senior Attorney

December 11, 2003

David Wornson  
Attorney, Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> St.  
Des Moines, IA 50319



011/12/2003 40560277 12/11/2003

RE: Former Manufactured Gas Plant, Council Bluffs, Iowa

Dear Mr. Wornson:

This responds to your letter to Steve Guyer, dated October 16, 2003, in which you ask MidAmerican Energy Company ("MidAmerican") to assess its liability regarding the former manufactured gas plant ("MGP") site in Council Bluffs, Iowa, ("Site") and to provide copies of relevant records.

As I understand the argument advanced by the potentially responsible party(ies), MidAmerican allegedly is successor to any liability that Nebraska Power Company ("NPC") may have had for Iowa based MGP environmental liabilities.<sup>1</sup> For the reasons stated below, MidAmerican is not a potentially responsible party at the Site. I have attached the more significant supporting documents.

#### NPC's Liability Has Not Been Established

Assuming the factual information presented by the potentially responsible party(ies) is correct, during the period 1917-1928, NPC was the parent of the owner/operator Citizens Gas and Electric Company of Council Bluffs ("CGE"). CGE sold the Site real estate in 1928 to Council Bluffs Gas Company, then allegedly merged into NPC in 1937. No information has been presented regarding the operating relationship between NPC and CGE, and the alleged merger between the two.

Owner and operator liability arguably passed from CGE to Council Bluffs Gas Company in 1928. The asset purchase agreement appears to transfer every aspect of the MGP business to Council Bluffs Gas Company.<sup>2</sup> Thus, successors to Council Bluffs Gas Company may be responsible for pre-1928 owner/operator liability under the "substantial continuation" test. Under this test, courts look to the substance, not the form of the transaction to find successor liability. See United States v. Mexico Feed and Seed Company, 980 F.2d 478, 488 (8<sup>th</sup> Cir. 1992). Certainly the equities weigh in favor of assigning liability to the purchaser and then

<sup>1</sup> I have not attempted to verify the historical information the potentially responsible entities have provided regarding events occurring prior to 1946.

<sup>2</sup> June 1, 1928 Agreement between Citizens Gas & Electric Company of Council Bluffs and Council Bluffs Gas Company. (Attachment 1)

operator of the MGP business and real estate, as opposed to the innocent purchaser of an electric distribution business 18 years after the fact.

Even assuming that CGE retained its owner and operator liability after selling the MGP, NPC may not have succeeded to the liabilities of CGE. Although the parties are reported to have merged, no merger agreement has been presented. Further, there is no information to support a theory of derivative owner and operator liability against NPC. Such a theory would require piercing NPC's corporate veil. A number of factors must be applied in order to determine whether a corporate veil may be pierced, but generally it is possible where the subsidiary was formed to perpetuate fraud, or where there was a failure to observe corporate formalities and separateness. No information has been presented that would indicate either circumstance existed here. Similarly, no information has been presented that would show NPC so controlled the MGP operations that it was directly liable as an operator.

Western Iowa Power Did Not Assume Environmental Liabilities

NPC later was purchased by the Omaha Electric Committee, ("OEC"), a non-profit quasi-public membership corporation without capital stock.<sup>3</sup> OEC held assets in trust for the benefit of Omaha Public Power District ("OPPD").<sup>4</sup> On November 14, 1946, OEC formed Western Iowa Power Company ("WIP") and owned all the shares.<sup>5</sup> On December 2, 1946, WIP offered to purchase 77,000 shares of NPC stock from OEC.<sup>6</sup> At that time, it appears that NPC owned and operated electric power facilities only. Upon receipt of the shares, WIP would issue bonds to NPC in the principal amount of \$3,350,000.<sup>7</sup>

That same day, OEC and twelve individuals, owners of all the issued stock of NPC, approved a plan of partial liquidation of NPC whereby WIP would surrender the 77,000 shares of NPC stock, and receive in return certain Iowa assets of NPC.<sup>8</sup> The Plan of Liquidation approved by the NPC shareholders states that WIP will receive most Iowa electric distribution facilities, and:

other assets connected with the operation of the properties to be acquired by Western Iowa Power Company, consisting of cash, accounts receivable, inventories, prepaid expenses and other current assets, less certain liabilities,

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<sup>3</sup> Iowa Power and Light Company form U-1 section I(6), p. 1, January 29, 1949.

<sup>4</sup> WIP directors meeting minutes, July 14, 1948, p. 1; WIP directors meeting minutes, August 18, 1947, p. 2.

<sup>5</sup> WIP directors meeting minutes, November 19, 1946 p. 1.

<sup>6</sup> WIP directors meeting minutes, December 2, 1946, p. 1-2. (Attachment 2)

<sup>7</sup> *Id.* at p. 2. (Attachment 2)

<sup>8</sup> *Id.* at p. 3. (Attachment 2)

which shall be assumed by Western Iowa Power Company, consisting of accounts payable, accrued taxes, customers' advances, customers' contributions, customers' deposits and accrued interest thereon, other current liabilities, and reserve for injuries and damages, the excess of such assets over such liabilities to equal the net aggregate amount of \$35,000, all as selected and determined by Haskins & Sells and R.W. Beck and Associates.<sup>9</sup>

For the reasons stated above, there is no evidence that NPC held environmental liabilities for the Site. Even assuming it did, there is no indication that the parties intended WIP to assume any specific liabilities, much less Iowa-based MGP environmental liabilities, when purchasing a small minority position in NPC stock for its electric distribution system. Even assuming the liabilities automatically accompanied the NPC stock, WIP held that stock for less than 24 hours before transferring it back to NPC. Even assuming a general rule that liabilities remain when the stock does not, under NPC's Plan of Partial Liquidation, WIP specifically retained only certain listed liabilities, Iowa-based environmental liabilities not being among them.

Iowa Power and Light Company Did Not Assume Environmental Liabilities

On February 11, 1949, Iowa Power and Light Company ("IPL") entered into an agreement with OEC to purchase all the outstanding shares of WIP from OEC for \$3,350,000 for its electric distribution system<sup>10</sup>. OEC warranted that the WIP financial statements correctly reflected WIP's financial condition; the financials do not show any recorded liability for Iowa-based MGP environmental liabilities.<sup>11</sup>

On May 14, 1949, the transaction closed.<sup>12</sup> Later that day, IPL dissolved WIP.<sup>13</sup> Under the plan of liquidation, WIP transferred all its assets to IPL, and IPL surrendered all of WIP stock to the WIP secretary for cancellation.<sup>14</sup> IPL agreed to "assume all obligations of Western Iowa under all executory contracts, unexpired leases, and other undertakings of Western Iowa."<sup>15</sup> WIP was authorized to wind up its affairs post dissolution.<sup>16</sup>

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<sup>9</sup> Id. at p. 4. (Attachment 2)

<sup>10</sup> Agreement between Omaha Electric Committee, Inc. (for itself and as trustee for Omaha Public Power District) and Iowa Power and Light Company, February 11, 1949, p. 2-3. (Attachment 3)

<sup>11</sup> Id. at section 6(e), p. 6, and Exhibit A. (Attachment 3)

<sup>12</sup> OPPD Board of Directors resolution, dated May 14, 1949. (Attachment 4)

<sup>13</sup> WIP Special Directors Meeting Minutes, May 14, 1949. p. 9. (Attachment 5)

<sup>14</sup> Id. at p. 4-5. (Attachment 5)

<sup>15</sup> Id. at p. 5. (Attachment 5)

<sup>16</sup> Id. at p. 5. (Attachment 5)

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Attorney, Iowa Department of Natural Resources  
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As discussed above, WIP did not hold Iowa-based MGP environmental liabilities. Even assuming that it did, OEC did not pass those liabilities to IPL when it sold WIP stock to IPL. The parties relied on financial statements that did not show environmental liabilities. Further, the dissolution was implemented within seven hours of the acquisition of WIP stock. The plan of dissolution did not pass Iowa-based MGP environmental liabilities to IPL.

In summary, there is no evidence that NPC held environmental Site liabilities, and even if did, WIP did not assume liability for the Site. Assuming somehow that NPC held such liabilities, and further assuming that WIP obtained those liabilities, liability did not pass to IPL and then to MidAmerican. WIP and IPL purchased an electric distribution system without any knowledge of, or intent to evade MGP liabilities. There is no equity in requiring MidAmerican to address contamination caused by the MGP.

Due to the focused nature of your inquiry, I have not listed or addressed other defenses that MidAmerican may have, based on Blue Chip or other law, nor have I attempted to find potentially responsible parties.

Please call me if you have any questions.

Sincerely,

  
Peg Roy  
Senior Attorney

Enclosures

MAR/dsb

David Wornson  
Attorney, Iowa Department of Natural Resources  
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bcc: Steve Guyer  
Cathy Woollums

KNOW ALL MEN BY THESE PRESENTS, That CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, a corporation organized and existing under the laws of the State of New Jersey and duly qualified to transact business within the State of Iowa, pursuant to resolutions duly passed by its stockholders and its Board of Directors, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable considerations, receipt whereof is hereby acknowledged, has sold and conveyed, assigned, transferred and delivered, and by these presents does hereby sell and convey, assign, transfer and deliver unto COUNCIL BLUFFS GAS COMPANY, a corporation organized and existing under the laws of the State of Delaware and duly authorized to transact business in the State of Iowa, the following described property, situated in the County of Pottawattamie and State of Iowa, to wit:

PARCEL I

That part of Lot Five (5) in Block Three (3) of Bryant and Clark's Subdivision in the City of Council Bluffs, County of Pottawattamie and State of Iowa, described as follows:

Commencing at the Northwest corner of said Lot Five (5) and running thence Southerly along the Westerly line of said Lot Five (5) a distance of twenty-five (25) feet; thence Easterly at right angles to said Westerly line a distance of twenty (20) feet; thence Northerly, parallel with said Westerly line of said Lot Five (5) a distance of twenty-five (25) feet to the Northerly line of said lot; thence Westerly along the Northerly line of said lot twenty (20) feet to the place of beginning

PARCEL II

The South Half ( $S\frac{1}{2}$ ) of Lot Three (3), all of Lots Four (4), Five (5), Six (6) and Seven (7), the South twenty-two and two-thirds ( $22\frac{2}{3}$ ) feet of Lot Eight (8), the South Half ( $S\frac{1}{2}$ ) of Lot Eleven (11) and all of Lots Twelve (12), Thirteen (13) and Fourteen (14), all in Block Twelve (12) in the Subdivision of the Riddle Tract in Council Bluffs, Iowa, also known as Riddle's Subdivision in Council Bluffs, Iowa.

PARCEL III

Lots Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12) and Thirteen (13) and the South ten (10) feet of Lot Fourteen (14), all in Block Eleven (11) of the Subdivision of the Riddle Tract in Council Bluffs, Iowa, also known as Riddle's Subdivision, in Council Bluffs, Iowa. 2)

PARCEL IV

That certain tract or parcel of land constituting vacated alleys lying in Riddle's Subdivision of the City of Council Bluffs, Iowa, vacated by ordinance passed May 7, 1928, approved May 9, 1928, described as follows:

(a) Those portions of the vacated alleys lying South of a line one hundred forty-six (146) feet North of and parallel to the South line of Block Eleven (11) in Riddle's Subdivision of the City of Council Bluffs, Iowa, said vacated alleys being more particularly described as:

The vacated alley lying between the South line of Lots Seventeen (17) to Twenty (20) inclusive, and the North line of Lots Seven (7) to Ten (10) inclusive, and West of the East lines of Lots Seven (7) and Twenty (20), extended and joined; the vacated alley lying between the East line of Lots Eleven (11) to Sixteen (16) inclusive and the West line of Lots Seventeen (17) and Ten (10), extended and joined;

(b) Those portions of the vacated alleys lying South of the center lines of Lots Three (3) and Eleven (11), extended and joined, in Block Twelve (12) in Riddle's Subdivision of the City of Council Bluffs, Iowa, being more particularly described as:

That portion of the vacated alley lying between the West line of Lots One (1) to Six (6), inclusive and the East line of Lots Seven (7) and Eight (8) and the vacated alley lying between the East line of Lots Nine (9) to Fourteen (14) inclusive and the West line of Lots Seven (7) and Eight (8), all in Block Twelve (12) in Riddle's Subdivision aforesaid;

(c) That portion of the West Half (W $\frac{1}{2}$ ) of the vacated alley lying between the Westerly lines of Lots Four (4), Five (5) and Six (6) and the Easterly line of Lot Seven (7) and South of the Northerly line of Lot Seven (7), prolonged Eastward, in Block Eleven (11), Riddle's Subdivision of the City of Council Bluffs, Iowa, the center line of said alley being the Westerly line of the buildings and projections of the Mona Motor Oil Company located in said vacated alley on May 12, 1928. m7

PARCEL V.

The gas manufacturing plant and plant site of the grantor in the City of Council Bluffs, including all gas holders, expansion tanks, gas mains, buildings and structures located upon the tracts of land above described, and all the grantor's easements, rights of way, rights, permits, privileges, licenses, machinery, engines, equipment, appliances and appurtenances forming a part of the said plant or site or used or enjoyed in connection therewith.

PARCEL VI.

The gas distributing system of the grantor in, and in the vicinity of, the City of Council Bluffs, including all gas holders, expansion tanks, tunnels, conduits, gas mains and pipes, service pipes, fittings, gates, valves, connections, meters, appliances, devices, equipment and appurtenances and all grantor's other property, real, personal or mixed, used or enjoyed in connection with said distributing system, whether used for the distribution of natural, artificial or mixed gas, together with all rights of way, easements, permits, privileges, municipal or other franchises, licenses, consents and rights for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways or any public or private lands in, and in the vicinity of, said City of Council Bluffs.

PARCEL VII.

All the railroad tracks of the grantor in said City of Council Bluffs, used in or in connection with the manufacture, sale and distribution of gas by the grantor in said City, together with all spur tracks, switches, sidings, rails, ties, appurtenances and equipment, rights of way, easements, contracts, permits and consents appertaining thereto, and all grantor's right, title and interest in and to the lands upon which the same are



situated.

PARCEL VIII.

All those certain rights, privileges and franchises now owned and held by the grantor for the construction, maintenance and operation of the gas plant and system in, and in the vicinity of, the City of Council Bluffs, including those granted by that certain franchise granted to Grantor, its successors and assigns, by the City of Council Bluffs, Iowa by ordinance adopted by the City council of said City on October 1, 1923, (said ordinance being document 2551, of the Ordinances of the City of Council Bluffs, Iowa), and subsequently approved on October 2, 1923 by the Mayor of said City, and which subsequently received the favorable vote of a majority of the electors of the City of Council Bluffs voting upon the question at a special election held for that purpose.

PARCEL IX.

All furniture, fixtures, equipment, tools, supplies, stores, material, fuel, merchandise, motor vehicles, horses, mules, wagons and transportation equipment owned by the grantor and used exclusively in, or exclusively in connection with, the manufacture, sale and distribution of gas in, and in the vicinity of, said City of Council Bluffs, County of Pottawattamie, State of Iowa.

The grantor hereby warrants the title against all persons whomsoever.

IN WITNESS WHEREOF the said Citizens Gas & Electric Company of Council Bluffs has caused these presents to be signed by one of its Vice-Presidents and attested by one of its Assistant Secretaries and its corporate seal to be

hereto affixed, this 1st day of June, A.D. 1928.

CITIZENS GAS & ELECTRIC COMPANY  
OF COUNCIL BLUFFS

By A. S. Grenier  
Vice-President.

Attested:

H. L. Martin  
Assistant Secretary.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS

On this 1st day of June, A.D. 1928, before me,

MARY J. GUILFOYLE, a notary public in and for said County in the State aforesaid, personally appeared A. S. GRENIER and H. L. MARTIN, to me personally known and to me known to be a Vice-President and an Assistant Secretary, respectively, of CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, who being by me severally and duly sworn, each for himself did say that he, the said A. S. GRENIER, is a Vice-President, and he, the said H. L. MARTIN, is an Assistant Secretary of said CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said A. S. GRENIER and H. L. MARTIN have acknowledged the execution of said instrument to be the voluntary act and deed of said CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, by it voluntarily executed.

WITNESS my hand and notarial seal this 1st day of June, A.D. 1928.

Mary J. Guilfoyle  
Notary Public in and for the State of New York  
License No. 25018, Commission Expires March 10, 1931

MINUTES OF MEETING OF BOARD OF DIRECTORS

OF

WESTERN IOWA POWER COMPANY

Held December 2, 1946  
at 11:05 o'clock A.M.  
(Eastern Standard Time)

A meeting of the Board of Directors of Western Iowa Power Company, an Iowa corporation, was held on the 2nd day of December, 1946, at the hour of 11:05 o'clock A.M. (Eastern Standard Time); in the Directors Room of Guaranty Trust Company of New York (whose address is 140 Broadway), in the City of New York, State of New York, pursuant to waiver of notice thereof signed by all of the members of the Board of Directors of Western Iowa Power Company. A copy of said waiver is attached to these minutes.

The following Directors were present:

T. H. Maenner  
Sidney J. Cullingham  
Bernard R. Stone  
Emil E. Wolf  
B. H. Baer  
Gerald Collins

the same being all of the Directors of the Company and a quorum for the transaction of business.

Mr. Sidney J. Cullingham, President of the Company, presided at the meeting and Mr. Bernard R. Stone, Secretary, recorded the minutes.

The President commented that Omaha Electric Committee, Inc. had made payment of the subscription price for 5,000 shares of stock of Western Iowa Power Company, and that in accordance with the provisions of the Articles of Incorporation of the Company it was now proper for the Company to commence the transaction of business.

There was then introduced and read a draft of a proposal to be made by this Company to Omaha Electric Committee, Inc., a Nebraska non-profit corporation, reading as follows, to-wit:

"December 2, 1946

Omaha Electric Committee, Inc.,  
a Nebraska corporation:

The undersigned, Western Iowa Power Company, an Iowa corporation (hereinafter called the "Company"), hereby offers to purchase from Omaha Electric Committee, Inc. (hereinafter called the "Committee"), 77,000 shares

of common capital stock of Nebraska Power Company, a Maine corporation, and agrees to deliver in exchange therefor its bonds and debentures or bonds in the aggregate principal amount of \$3,350,000., described as follows, to-wit:

- (a) Bonds of the Company in the principal amount of \$1,800,000; bearing interest at the rate of 3-1/2% per annum, payable semi-annually, maturing 25 years from date of such bonds, secured by a lien on substantially all of the assets of the Company, issued under an indenture having provisions which, in view of the character of the security, are reasonable and appropriate.
- (b) \$1,550,000. principal amount of debentures or bonds of the Company, maturing 30 years from the date of said debentures or bonds, except as the parties may otherwise mutually agree, bearing interest at the rate of 4-1/4% per annum, payable semi-annually, issued under an indenture appropriate in view of the character of the securities issued and with such security as you may require.

It is agreed that the certificates evidencing 77,000 shares of common capital stock of Nebraska Power Company will be delivered and transferred to the undersigned forthwith and that within ninety days after such delivery the undersigned shall be obligated to deliver to Omaha Electric Committee, Inc. the securities above described.

Please evidence your acceptance hereof on a counterpart which is delivered to you herewith.

Western Iowa Power Company

By Sidney Mullington  
President

The above proposal is hereby accepted by Omaha Electric Committee, Inc. on this 2nd day of December, 1946.

Omaha Electric Committee, Inc.

By J. H. Maenn  
President

A discussion was had as to the advisability of such proposal and thereafter, upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

Be It and It Is Hereby Resolved by the Board of Directors of Western Iowa Power Company, an Iowa corporation, that the President or a Vice-President of this Company be and he is hereby authorized to acquire from Omaha Electric Committee, Inc. certificates evidencing 77,000 shares of the common capital stock of

Nebraska Power Company, a Maine corporation,  
and that such officers be further authorized to  
submit to Omaha Electric Committee, Inc. a pro-  
posal for such acquisition in the form presented  
at this meeting.

Be It Further Resolved that on the acquisi-  
tion by this Company of certificates evidencing  
said shares of stock, the officers of this Company  
be and they are hereby authorized to secure the  
execution by all of the stockholders of Nebraska  
Power Company of an instrument approving a plan  
of partial liquidation which shall read as follows,  
to-wit:

"Approval of Plan of Partial Liquidation of  
Nebraska Power Company

The undersigned holders of all of the outstand-  
ing stock of Nebraska Power Company, consisting of  
1,000,000 shares of common stock, hereby approve a  
partial liquidation of said Company, consisting of  
the transfer by Nebraska Power Company to Western  
Iowa Power Company, an Iowa corporation, of property  
of Nebraska Power Company described in Exhibit A  
transmitted herewith upon the simultaneous surrender  
for cancellation by said Western Iowa Power Company  
of certificates evidencing 77,000 shares of common  
stock of Nebraska Power Company, and hereby authorize  
the Directors of Nebraska Power Company to take all  
action by them deemed advisable in order to complete  
such partial liquidation.

DATED this 2nd day of December, 1946.

OMAHA ELECTRIC COMMITTEE, INC.  
owner of 922,988 shares

By J. H. McNeill  
President

Attest:

Lidney J. Cullingham  
Secretary

WESTERN IOWA POWER COMPANY  
owner of 77,000 shares

By Lidney J. Cullingham  
President

Attest:

Donald R. Stone  
Secretary

B. A. Bar, owner of one share  
Leah C. Cullins, owner of one share  
Lidney J. Cullingham, owner of one share

J. E. Anderson, owner of one share  
John A. Hill, owner of one share  
W. T. Fraser, owner of one share  
J. H. MacLean, owner of one share  
Frank J. Pauline, owner of one share  
Edmund Stafford, owner of one share  
Edmund A. Stone, owner of one share  
W. W. Wentrub, owner of one share  
Frank C. Mott, owner of one share "

"EXHIBIT A.


1. All of the physical properties owned by Nebraska Power Company located in the State of Iowa other than property used or held for use in connection with the operation of a distribution system at Carter Lake, Iowa.

2. Other assets connected with the operation of the properties to be acquired by Western Iowa Power Company, consisting of cash, accounts receivable, inventories, prepaid expenses and other current assets, less certain liabilities, which shall be assumed by Western Iowa Power Company, consisting of accounts payable, accrued taxes, customers' advances, customers' contributions, customers' deposits and accrued interest thereon, other current liabilities, and reserve for injuries and damages, the excess of such assets over such liabilities to equal the net aggregate amount of \$35,000., all as selected and determined by Haskins & Sells and R. W. Beck and Associates."

Be It Further Resolved that the President or a Vice-President of this Company be and he is hereby authorized to take all steps and do all acts by such officer deemed advisable in order to secure appropriate corporate action by Nebraska Power Company providing for the carrying out of said plan of partial liquidation and all acts deemed advisable in order to consummate said plan of partial liquidation, including the surrender by this Company to Nebraska Power Company for cancellation of certificates evidencing 77,000 shares of common stock of Nebraska Power Company.

Be It Further Resolved that when and as this Company shall have acquired property pursuant to said plan of partial liquidation, the officers of this Company be and they are hereby authorized to commence the operation of said property and to do all acts by them deemed advisable in connection therewith.

There being no further business to come before the meeting, the same, upon motion duly made, seconded and unanimously carried, was adjourned.

  
Secretary

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# AGREEMENT

BETWEEN

OMAHA ELECTRIC COMMITTEE, INC.

(FOR ITSELF AND AS TRUSTEE FOR OMAHA PUBLIC POWER DISTRICT)

AND

IOWA POWER AND LIGHT COMPANY

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FEBRUARY 11, 1949

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**THIS AGREEMENT**, by and between OMAHA ELECTRIC COMMITTEE, INC., a corporation, organized and existing under and by virtue of the laws of the State of Nebraska, Party of the First Part (hereinafter for convenience referred to as the "Committee"), for itself and as Trustee for Omaha Public Power District, a political subdivision of the State of Nebraska (hereinafter for convenience referred to as the "District"), and IOWA POWER AND LIGHT COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Iowa, Party of the Second Part (hereinafter for convenience referred to as "Iowa Power"),

**WITNESSETH:**

WHEREAS, on December 4, 1948, the parties hereto entered into an agreement for the purchase by Iowa Power from the Committee of all the issued and outstanding stock and bonds of Western Iowa Power Company (hereinafter for convenience referred to as, "Western Iowa"), subject to the conditions hereinafter set forth;

WHEREAS, Iowa Power on December 4, 1948, delivered to the Committee its check in the amount of \$100,000.00 as a down payment on the purchase price of said securities to be held by the Committee subject to the terms and conditions specified in Section 14 hereof; and

WHEREAS, it is the desire of the parties hereto to set forth in a detailed contract the terms and conditions of said agreement for the purchase of said securities:

Now, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

SECTION 1. That for and in consideration of the purchase price therefor to be paid by Iowa Power, and in further consideration of the agreements and undertakings of Iowa Power, as hereinafter set forth and contained, the Committee has agreed, and does hereby agree, on the conditions as herein-

after stated, to sell, assign, transfer and convey unto Iowa Power the securities more specifically described as follows, to-wit:

(a) Five thousand (5,000) shares of the capital stock of Western Iowa, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and having its principal place of business in the City of Council Bluffs, Pottawattamie County, Iowa, of the par value of Ten Dollars (\$10.00) for each share; the same constituting all the authorized, issued and outstanding stock of Western Iowa; and

(b) Bonds of said Western Iowa aggregating in face value Three Million, Three Hundred Fifty Thousand Dollars (\$3,350,000.00), issued under and secured by a mortgage and deed of trust dated as of December 2, 1946, and executed by Western Iowa to Edward F. Leary, as Trustee; said bonds being more specifically described as follows:

(1) A bond (or bonds) of, or aggregating, One Million, Eight Hundred Thousand dollars (\$1,800,000.00) principal amount, known as "Western Iowa Power Company First Mortgage Bond(s), 3½% Series, due 1971."

(2) A bond (or bonds) of, or aggregating, One Million, Five Hundred Fifty Thousand Dollars (\$1,550,000.00) principal amount, known as "Western Iowa Power Company First Mortgage Bond(s), 4¼% Series, due 1976."

SECTION 2. Subject to the conditions precedent set forth in Section 3 hereof and subject to the adjustments in the purchase price hereinafter specified, Iowa Power agrees to purchase from the Committee the aforesaid securities and to pay to the Committee therefor on the acquisition date:

(a) The sum of Three Million, Four Hundred Thirty Thousand Dollars (\$3,430,000.00), less the sum of One Hundred Thousand Dollars (\$100,000.00) heretofore paid by Iowa Power to the Committee as a down payment

on the purchase price and less the further sum of One Hundred Thousand Dollars (\$100,000.00) to be withheld by Iowa Power subject to the conditions of Section 13 hereof; and

(b) An additional amount of money equal to the interest accrued on the above-described bonds to the acquisition date from the last interest payment date prior thereto.

SECTION 3. The obligation of Iowa Power to consummate the transaction herein provided for, including the payment of the purchase price, is subject to the following conditions precedent:

(a) That Iowa Power secures from the City of Council Bluffs, Iowa, a franchise, satisfactory to it, authorizing it to use and occupy the streets, alleys, and public grounds of the City of Council Bluffs, for all usual and customary purposes in connection with the operation of an electric utility system;

(b) That Iowa Power secures from the Securities and Exchange Commission, an order, satisfactory to it, authorizing it to acquire the stock and bonds above described, and to acquire the direct ownership of the properties of Western Iowa by the liquidation and dissolution thereof or otherwise;

(c) That Iowa Power secures from Omaha Public Power District a contract for the purchase and delivery of electric power and energy to the electric utility properties now owned and operated by Western Iowa, a copy of which contract is attached hereto and marked Exhibit "E";

(d) That on the acquisition date the Committee shall have complied with the obligations contained in its agreement hereinafter set forth, and that on the acquisition date the representations and warranties of the Committee hereinafter set forth are true and correct.

SECTION 4. Iowa Power has initiated and agrees diligently to pursue negotiations with the City Council of the City of

Council Bluffs for a franchise; and agrees that if a franchise ordinance, satisfactory to it, is duly passed and adopted by the City Council, and ordered submitted to the voters of the City at a special election, it will pay the costs incident to the holding of such special election. Iowa Power agrees that notwithstanding it shall have secured a satisfactory franchise from the City of Council Bluffs, nevertheless, it will not accept such franchise until the purchase of the securities provided for herein shall have been consummated.

Iowa Power further agrees that it will promptly make application to the Securities and Exchange Commission for the order referred to in Section 3(b) hereof, and agrees that it will exercise all reasonable diligence in obtaining such order in a form satisfactory to it.

Iowa Power affirms that it heretofore has initiated negotiations with Omaha Public Power District for the power contract referred to in Section 3(c) hereof, and agrees that it will diligently pursue such negotiations.

Iowa Power agrees that when and if it has been granted a satisfactory franchise by the City of Council Bluffs and the same has been duly approved by the voters, as required by the laws of the State of Iowa, and that when and if it has been granted a satisfactory order by the Securities and Exchange Commission, and that when and if it has entered into a satisfactory power contract with Omaha Public Power District, it will, as to each of such events, notify the Committee in writing.

SECTION 5. It is understood and agreed by both parties to this agreement that the term "date of acquisition" or "acquisition date" as used in this agreement means (i) such business day as shall be designated by Iowa Power by five days' prior notice to the Committee following the fulfillment of the conditions precedent specified in paragraphs (a), (b) and (c) of Section 3 hereof and shall be a day not later than the first

day of the first succeeding month after the fulfillment of all of the said conditions precedent specified in said paragraphs (a), (b) and (c), or (ii) such other day as shall be mutually agreed upon by the parties hereto. Unless some other time shall be mutually agreed upon by the parties hereto, the closing on the acquisition date shall begin at 10:00 A. M., Central Standard Time, and the place of closing on the acquisition date shall be at the office of the Committee at Omaha, Nebraska, or such other place as shall be mutually agreed upon by the parties hereto.

Upon the acquisition date, Iowa Power shall pay to the Committee the amounts specified in Section 2 hereof upon the delivery by the Committee to Iowa Power of the securities described in Section 1 hereof with all necessary transfer stamps attached and canceled and with the certificates of stock representing the shares to be transferred properly and effectively endorsed for transfer, and with the bond or bonds of each series duly endorsed or assigned in the manner required by the mortgage and deed of trust dated as of December 2, 1946, with all unpaid coupons, if any, attached, so as to effectually vest title and ownership to all such securities in Iowa Power; all of such transfers, endorsements and assignments to be in a form satisfactory to Iowa Power.

SECTION 6. The Committee represents and warrants:

(a) That it is a corporation, organized and existing, and in good standing, under the laws of the State of Nebraska; and it has full power and authority to enter into this agreement; that the execution and delivery of this agreement and the consummation of the transaction herein provided for have been duly authorized by its Board of Directors and have been approved by Omaha Public Power District; that in the opinion of counsel for the Committee no other consent or approval, of or by any governmental body or otherwise, is requisite to the validity of such execution, delivery or consummation by the Committee;

(b) That Western Iowa is a corporation duly organized, existing and in good standing under the laws of the State of Iowa; that its authorized capital stock consists of five thousand (5,000) shares of the par value of Ten Dollars (\$10.00) per share; that all of said shares are validly issued and outstanding, are fully paid and non-assessable; and that said shares constitute and will constitute on the acquisition date all the authorized, issued and outstanding stock of Western Iowa;

(c) That the funded debt of Western Iowa consists solely of the bonds described in Section 1(b) hereof; that said bonds are valid obligations of Western Iowa and validly and lawfully issued under the provisions of the mortgage and deed of trust dated as of December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee, and that no other bonds will be issued or outstanding under said mortgage and deed of trust on the acquisition date; that the properties of Western Iowa are, and will be on the acquisition date, subject to no lien or encumbrance (except the lien or liens, if any, of current unpaid taxes) other than the lien created by the above-mentioned mortgage and deed of trust; and that no default exists, or will exist on the acquisition date, with respect to the payment of interest due on said bonds, or with respect to any covenant of Western Iowa contained in said mortgage and deed of trust;

(d) That the Committee now has, and on the acquisition date will have, good title to all of the outstanding shares of capital stock of Western Iowa free and clear of all liens and encumbrances thereon; that the Committee now has, and on the acquisition date will have, good title to all of the bonds described in Section 1(b) hereof; and that on the acquisition date the Committee will have full right and lawful authority to sell, transfer, assign and deliver said shares of stock and said bonds to Iowa Power in accordance with this agreement;

(e) That the balance sheet of Western Iowa, dated as of September 30, 1948, and the statement of income and earned surplus of the company for the twelve months ended September 30, 1948, hereto attached, and marked

Exhibit "A", correctly present the financial condition and the results of operations of the company at such date and for the period covered thereby; that provision has been made in said balance sheet to the extent necessary to conform to generally accepted accounting practices for all liabilities of the company, whether fixed or contingent, liquidated or unliquidated, existing on September 30, 1948; and that no material adverse change in the financial condition of the company or its operations has occurred since September 30, 1948, excepting changes occurring in the ordinary course of business;

(f) That the current assets shown on the balance sheet of Western Iowa as of September 30, 1948, were sound and of a value equal to the amount shown thereon, less the reserves applicable thereto;

(g) That Exhibit "B" attached hereto correctly lists and describes all tracts and parcels of land now owned by Western Iowa;

(h) That Exhibit "C" attached hereto correctly lists and describes, with expiration dates, all franchises now held by Western Iowa for furnishing electric service in cities and towns;

(i) That Exhibit "D" attached hereto correctly lists and describes:

(1) All unexpired leases and contracts, including power purchase contracts, to which Western Iowa is a party, except contracts for the supplying of electric energy at published rate schedules to its customers and contracts for the sale or lease of appliances; and

(2) All litigation now pending to which Western Iowa is a party or which, to the knowledge of the Committee, is threatened against Western Iowa;

(j) That Western Iowa has good and merchantable title to all of its real and personal property, subject to the lien of the mortgage and deed of trust dated as of December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee, and that the contracts and leases described on Exhibit "D" attached hereto are cancel-

lable by Western Iowa at any time, at its election, and will be so cancellable on the acquisition date, unless otherwise indicated on the said Exhibit.

SECTION 7. Iowa Power represents and warrants:

(a) That it is a corporation organized and existing, and in good standing, under the laws of the State of Iowa; that it has full power and authority to enter into this agreement; that the execution and delivery of this agreement and the consummation of the transaction herein provided for have been duly authorized by its Board of Directors;

(b) That it is purchasing the securities of Western Iowa described in Section 1(a) hereof for its own account and investment and not with a view to, or for resale in connection with, the distribution thereof, nor with any present intention of distributing or reselling said securities.

SECTION 8. It is agreed by the parties hereto that the representations and warranties made by each and set forth in Sections 6 and 7 hereof shall continue and survive the acquisition date, except that no action for the breach of any warranty or representation contained in paragraphs (e), (f), (g), (h), (i) or (j) in Section 6 hereof, may be instituted or maintained unless commenced prior to the expiration of four (4) years after the acquisition date.

SECTION 9. The Committee agrees as follows:

(a) That it will cause Western Iowa to operate and maintain its properties in substantially as good condition of repair and running order as they were in on September 30, 1948, and will cause it to operate such properties in substantially the manner in which they were then being operated, changes in the ordinary course of business being excepted; that no effort will be made by Western Iowa during the period from September 30, 1948, to the acquisition date to reduce operating expenses and increase earnings in any way that would impair the value of its properties or the quality of its service;



that Western Iowa shall perform all necessary maintenance and construction work during such period but that no major items of construction shall be undertaken by Western Iowa without first procuring the approval of Iowa Power; that no major wage or salary changes will be made by Western Iowa during such period without the prior approval of Iowa Power; that its rates for the furnishing of electric service now in effect will not be increased or decreased by Western Iowa during such period without the prior approval of Iowa Power; that Western Iowa will not enter into any contracts after the execution of this agreement for the furnishing of electric service, except contracts for service at published rates, without the prior approval of Iowa Power; and that Western Iowa will enter into no contracts after the execution of this agreement for the furnishing of electric service for any period extending beyond January 1, 1950;

(b) That it will cause Western Iowa for the period from September 30, 1948, to the acquisition date to keep its accounts, charges, receipts and the recording thereof according to generally accepted utility accounting practices but not deviating materially from the practices actually employed by Western Iowa during the twelve months' period prior to September 30, 1948; and that it will cause Western Iowa to read its meters and post the results thereof to the books according to substantially the same schedule as that in effect as of September 30, 1948, so that the results of its operations during the period from September 30, 1948, to the acquisition date and its financial condition as of the close of business on the day preceding the acquisition date, as reflected on its books, can be calculated on a basis comparable to that employed in preparing the September 30, 1948, financial statements of Western Iowa;

(c) That it will cause Western Iowa to charge to income and to credit to depreciation reserve for the period from September 30 to December 31, 1948, the amount of \$8,000.00 per month and that for the period from December 31, 1948, to the acquisition date it will cause Western Iowa to increase such monthly charge and credit by the

same percentage as the percentage by which the amount of its depreciable property on December 31, 1948, exceeded the amount of its depreciable property on September 30, 1948;

(d) That it will have caused Western Iowa to have accrued on its books as of the acquisition date an amount sufficient to meet all liability outstanding on such date by Western Iowa for sales and use taxes;

(e) That it will cause Western Iowa to continue and maintain its pension plan to the acquisition date in accordance with the terms of its existing agreement and to make monthly provision for current services and a proportionate amount of the 10 per cent annual payment for past services to acquisition date; it being understood that this provision intends that Western Iowa should, subsequent to September 30, 1948, continue to make monthly provision for the pension plan, both for present and past services, on the same basis that such provision was made during the calendar year 1948;

(f) That until the acquisition date, Western Iowa will not without the written consent of Iowa Power:

(1) Sell, lease, mortgage or otherwise dispose of any of its properties, except in the ordinary course of business;

(2) Enter into, extend or renew any contracts, commitments or leases which would materially or adversely change its condition, financial or otherwise, or enter into, extend or renew any power purchase contracts;

(3) Incur any indebtedness, except in the ordinary course of business;

(4) Issue any additional shares of capital stock, or any bonds, debentures, notes or other securities; or

(5) Reduce its capital stock;

(g) That it will cause Western Iowa to permit Iowa Power through its representatives, attorneys and ac-

countants, to examine the properties, books, records, contracts, franchises, evidences of title, and all other things in connection with the properties, business and operations of Western Iowa; and that it will cause Western Iowa to furnish Iowa Power with its balance sheet as of the last day of October, 1948, and of the end of each succeeding month up to the acquisition date, together with statements of income and earned surplus of Western Iowa for the twelve months ending on the last day of October, 1948, and ending on the last day of each successive month thereafter, up to the acquisition date.

SECTION 10. Iowa Power agrees that promptly after the acquisition date it will cause Arthur Andersen & Co., independent public accountants, to make an examination of the books, records and accounts of Western Iowa, for the purpose of determining the amount, if any, by which the earned surplus of Western Iowa at the close of business on the day preceding the acquisition date exceeded or was less than the earned surplus shown in the financial statements of Western Iowa as of September 30, 1948, attached hereto. For the purpose of such determination, Arthur Andersen & Co. shall calculate the earned surplus of Western Iowa as of the close of business on the day preceding the acquisition date in accordance with generally accepted accounting principles. It is hereby understood and agreed that in the determination of earned surplus at September 30, 1948, the utility plant account shall be stated at book value of property actually owned as of that date and that the accrued depreciation or property retirement reserve shall be the amount shown by Western Iowa's records as of September 30, 1948. In the determination of earned surplus at the close of business on the day preceding the acquisition date, the utility plant account shall be stated at book value of property actually owned as of September 30, 1948, plus net additions to the utility plant account (which may be verified by Arthur Andersen & Co.) during the period from September 30, 1948, to the acquisition date, and the re-

tirement reserve is to be stated at the balance as of September 30, 1948, plus amounts provided subsequent to that date in accordance with paragraph (c) of Section 9 of this agreement, less charges to the reserve for retirements, abandonments, etc.

Arthur Andersen & Co. shall determine whether the current assets of Western Iowa as of the close of business on the day preceding the acquisition date, were sound and of a value equal to the amounts at which the same were carried in the accounts of Western Iowa on such date, less reserves applicable thereto. In this connection, inventories of materials and supplies are to be valued on the basis prescribed by the Federal Power Commission in its Uniform System of Accounts under Account No. 131.

Any net deficiencies found by Arthur Andersen & Co. in the current assets shall be offset against the aggregate of excessive reserves, overstatements of liabilities and recoveries of a current asset in excess of the net amount at which such asset was carried on the balance sheet of Western Iowa at the acquisition date; but not including in such aggregate any excessive reserve or overstatement of liabilities with respect to taxes. Should the net deficiencies in the current assets exceed such aggregate, then the amount of such excess shall be charged by Arthur Andersen & Co. against earned surplus. It is further understood, however, that if the net deficiencies in the current assets are not in excess of such aggregate, no adjustment is to be made to earned surplus, but the amount of such aggregate is not to be included in earned surplus.

Within forty-five days after the acquisition date, Arthur Andersen & Co. shall furnish a written report as to their findings, such report to contain the following data:

1. Balance sheet at date of acquisition and September 30, 1948;

2. Statement of profit and loss for the period from September 30, 1948, to date of acquisition;

3. Statement setting forth in complete detail, any and all adjustments made by Arthur Andersen & Co. which affected the earned surplus as shown by Western Iowa's books as of acquisition date.

Counterparts of Arthur Andersen & Co.'s report are to be submitted to the Committee, Iowa Power, the District, and to Haskins & Sells, certified public accountants. Within fifteen days after receipt of such report, the Committee or Iowa Power may notify in writing Arthur Andersen & Co., Haskins & Sells, and the other party, of any objections thereto, specifying clearly such objections. The report of Arthur Andersen & Co. shall also be reviewed by Haskins & Sells within fifteen days after receipt and if they do not agree to the findings of Arthur Andersen & Co. as disclosed by the report, they shall immediately review with Arthur Andersen & Co. their objections and agree upon a final determination of the earned surplus at date of acquisition in accordance with sound accounting principles. In connection herewith, Haskins & Sells shall have access to all books, records and accounts of the Western Iowa and to all working papers, files, etc of Arthur Andersen & Co. relating to their examination of Western Iowa accounts and the determination of earned surplus at the date of acquisition. Any objections submitted by either the Committee or Iowa Power shall also be considered jointly by Arthur Andersen & Co. and Haskins & Sells. After giving proper consideration to all objections made to the report as originally rendered, the two firms of accountants shall agree upon the final amount of the increase or decrease in earned surplus of Western Iowa Power Company during the period from September 30, 1948, to the date of acquisition, and Arthur Andersen & Co. shall issue a supplemental report, which shall be concurred in by Haskins & Sells, setting forth therein the final determination of such amount and shall advise the parties

hereto accordingly. Such supplemental report shall be issued not later than seventy-five days from the acquisition date and shall be conclusive and binding upon the Committee and Iowa Power.

Iowa Power agrees that, as soon as the supplemental report referred to hereinbefore shall have become conclusive and binding upon the parties hereto, it will promptly pay to the Committee the amount, if any, by which the earned surplus shown in said report exceeds the amount of earned surplus shown in the September 30, 1948, balance sheet of Western Iowa, attached hereto.

In the event that the earned surplus of Western Iowa shown in the aforesaid report is less than the earned surplus shown in the September 30, 1948, financial statements of Western Iowa attached hereto, the Committee agrees that as soon as such report shall have become conclusive and binding upon the parties hereto, it will promptly pay to Iowa Power the amount of such deficiency.

SECTION 11. Iowa Power agrees that at any time prior to the acquisition date, Western Iowa may assign to the Committee without consideration any and all claims, whether liquidated or unliquidated, for the refund of federal income taxes by reason of its being exempt from such taxes, in respect of such taxes paid by Western Iowa for any period prior to the acquisition date. Iowa Power agrees that after the acquisition date it will make available upon reasonable request to the Committee or its duly authorized representatives the books and records of Western Iowa for the purpose of furnishing to the Committee or its representatives such data as may be desired in connection with said claim or claims for refund. After acquisition date, upon the request of the Committee or the District, Iowa Power will cooperate with either in respect to the filing and prosecution of claims for refund of such taxes, and Iowa Power agrees that such claims may be filed and

prosecuted in the name of Iowa Power, if appropriate. Filing and prosecution shall be done by the Committee or the District, without expense to Iowa Power or Western Iowa.

Iowa Power agrees that any and all refunds of federal income taxes which may be received by it or by Western Iowa, by reason of Western Iowa being held exempt therefrom, in respect of such taxes paid by Western Iowa for any period prior to the acquisition date, shall be the property of the Committee, and upon the receipt thereof by Western Iowa or Iowa Power the same shall promptly be paid over to the Committee.

SECTION 12. Iowa Power agrees that if, after settlement of all taxes (including income taxes) incurred by Western Iowa during any period prior to the date of acquisition, it shall be found that accruals for unpaid taxes, included by Western Iowa in its accounts on the day preceding the date of acquisition after any adjustments thereto determined by the report of Arthur Andersen & Co. referred to in Section 10 thereof, were in excess of the amounts actually required to fully pay, settle and discharge such taxes, including all interest and penalty thereon, the excess of such accruals shall be paid over to the Committee.

SECTION 13. It is agreed by Iowa Power, the Committee, and the District by its approval noted below, that Iowa Power shall withhold from the purchase price hereinbefore provided the sum of One Hundred Thousand Dollars (\$100,000.00) as security for the payment of any undisclosed liabilities of any kind or nature which may be imposed on Western Iowa or Iowa Power with respect to the operations of Western Iowa in any period prior to the acquisition date. As used herein, the term "undisclosed liabilities" shall mean and include any liability or obligation of Western Iowa for which no provision or insufficient provision has been made in its books of account as of the acquisition date and shall include liabilities for income or other taxes, including any interest or penalties thereon,

accounts payable and damage suits, the obligations for or causes of action of which arose prior to the date of acquisition; but shall not include any tax resulting solely from the liquidation of Western Iowa by Iowa Power. In the event that any undisclosed liabilities are asserted from time to time against Iowa Power or Western Iowa, Iowa Power shall notify the Committee thereof, and unless within ten days after such notification the Committee shall inform Iowa Power that it desires to undertake the settlement or other disposition of any such undisclosed liability, Iowa Power shall have the exclusive right to settle, pay, discharge or otherwise dispose of the same and shall notify the Committee when final disposition has been made thereof. If the Committee shall notify Iowa Power that it wishes to undertake the settlement or other disposition of any undisclosed liability, Iowa Power agrees that it will cooperate and will cause Western Iowa to cooperate with the Committee in making such settlement or other disposition and the Committee shall reimburse Iowa Power for any expense, counsel fees, costs or similar expenditures made by it in connection therewith. Not later than four years after the acquisition date (unless at the expiration of such period there shall remain unsettled any undisclosed liability then in controversy or known to be unsettled), Iowa Power agrees to pay to the Committee the sum of One Hundred Thousand Dollars (\$100,000.00) withheld from the purchase price as provided in this Section, less the amount of any undisclosed liabilities paid by Iowa Power or Western Iowa pursuant to this agreement, and less any expense, including attorneys' fees, costs and similar expenditures, incurred by Iowa Power or Western Iowa in making settlement or other disposition of any undisclosed liability. At the time of the payment by Iowa Power to the Committee as herein provided, Iowa Power agrees to account to the Committee for all sums deducted by Iowa Power from the said One Hundred Thousand Dollars (\$100,000.00) and to pay to the Com-



mittee interest at the rate of 4% per annum upon the unexpended balance computed annually from the date of acquisition to the date of payment of such balance to the Committee.

SECTION 14. The Committee acknowledges that on December 4, 1948, Iowa Power paid to it the sum of One Hundred Thousand Dollars (\$100,000.00), under the following conditions and agreements:

(a) If Iowa Power consummates the purchase of the securities described in Section 1 hereof, in conformity with the provisions of this agreement, the said sum shall be credited on the purchase price;

(b) If Iowa Power fails to make a reasonable effort to obtain the fulfillment of the conditions precedent specified in paragraphs (a) and (b) of Section 3 of this agreement, said sum shall be forfeited and retained by the Committee as liquidated damages in full settlement of any and all liability of Iowa Power under this agreement;

(c) If Iowa Power shall make a reasonable effort to obtain the fulfillment of the conditions precedent specified in paragraphs (a) and (b) of Section 3 of this agreement, and shall fail to obtain the fulfillment of either or both of said conditions, or if for any other reason the purchase of the securities provided for herein shall not be consummated, then upon notice by Iowa Power to the Committee this agreement shall thereupon terminate, and the Committee shall promptly refund to Iowa Power the One Hundred Thousand Dollars (\$100,000.00) referred to in this Section.

SECTION 15. The Committee agrees that on the acquisition date it will deliver to Iowa Power the following documents:

(a) A duly certified copy of resolutions adopted by the Board of Directors of the Committee authorizing the execution and delivery of this agreement and the consummation of the transaction herein provided for;

(b) A duly certified copy of resolutions adopted by the Board of Directors of Omaha Public Power District

approving the execution and delivery of this agreement by the Committee and the consummation of the transaction herein provided for;

(c) An opinion of counsel for the Committee reciting in substance that the capital stock and the bonds described in Section 1 hereof are validly issued and are lawfully outstanding and that the Committee has lawful right and full authority to sell, assign, transfer and convey said capital stock and bonds to Iowa Power;

(d) An opinion of counsel for the Committee that Western Iowa has (i) valid legal title to the tracts and parcels of land described on Exhibit "B" attached hereto, (ii) a valid right in and to the franchises described on Exhibit "C" attached hereto, and that the same are lawfully assignable to Iowa Power, and (iii) a valid right in and to the leases and contracts described on Exhibit "D" attached hereto and that such leases and contracts are enforceable by Western Iowa;

(e) An opinion of counsel for the Committee reciting that the Committee has obtained full authority from all governmental bodies having jurisdiction over the Committee relative to the sale, assignment, transfer and conveyance of the capital stock and bonds described in Section 1 hereof and specifying the governmental body or bodies granting such authorization and the details thereof, or reciting that the obtaining of such authorization is not required;

(f) A certificate, signed by the president or a vice president of the Committee, attested by its secretary under its corporate seal, that there has been no material adverse change in the financial condition, operations or properties of Western Iowa subsequent to September 30, 1948, and to the acquisition date, or, if such material adverse change exists, specifying the same in reasonable detail. Said certificate shall further recite whether any litigation is pending to which Western Iowa is a party or which, to the knowledge of the signers, is threatened against Western Iowa other than the litigation described on Exhibit "D" attached hereto, and, if any such litiga-

tion is pending or threatened, a recital thereof in reasonable detail;

(g) The resignations, effective upon acceptance by Iowa Power, of all of the officers and directors of Western Iowa.

SECTION 16. It is expressly agreed by and between the Committee and Iowa Power that if by June 1, 1949, Iowa Power shall not have been successful in obtaining the fulfillment of any one or more of the conditions precedent specified in paragraphs (a), (b) and (c) of Section 3 hereof, then in such event either party hereto may at its option cancel and terminate this agreement effective immediately upon written notice to the other party, and in the event of such termination there shall be no further liability under this agreement by either party to the other, except the obligation of the Committee to return to Iowa Power the sum of One Hundred Thousand Dollars (\$100,000.00) in accordance with the provisions of Section 14 hereof.

SECTION 17. In the event that the certificate as to material adverse change required to be furnished under Section 15 hereof shall show a material adverse change in the financial condition, operations or properties of Western Iowa, then the parties hereto shall agree upon an adjustment in the purchase price described in Section 2 hereof, such adjustment to reflect the effect of such material adverse change, but failing to agree upon such adjustment either party hereto may by written notice to the other party cancel and terminate this agreement, and there shall thereafter be no liability under this agreement on the part of either party, except the obligation of the Committee to return to Iowa Power the sum of One Hundred Thousand Dollars (\$100,000.00) as provided in Section 14 hereof.

In the event it shall appear from the certificate referred to in Section 15(f), or otherwise, that on the acquisition date litigation is pending to which Western Iowa is a party, or

then threatened against it, which involves a substantial financial claim against Western Iowa or may result in material adverse effects to its operations or properties, Iowa Power may require the Committee to furnish reasonable security indemnifying it and Western Iowa against such claim or effects, or may elect to cancel and terminate this agreement, and in case of such cancellation or termination for such reason there shall thereafter be no liability under this agreement on the part of either party, except the obligation of the Committee to return to Iowa Power the sum of One Hundred Thousand Dollars (\$100,000.00) as provided in Section 14 hereof.

SECTION 18. This agreement shall not become effective or binding upon either of the parties hereto until approved by Omaha Public Power District, such approval to be signified by its signature to this agreement. When this agreement has become effective and binding on the parties hereto, it shall supersede the agreement of December 4, 1948, referred to in the Preamble hereof. .

SECTION 19. Any notice or demand required or permitted to be given or made hereunder shall be sufficiently given or made by mailing the same by registered mail in a sealed envelope, postage prepaid, and addressed to the Committee at its office in Omaha, Nebraska, attention of Mr. W. C. Fraser or Mr. W. W. Wenstrand, at 637 Omaha National Bank Building, and addressed to Iowa Power, attention of Mr. C. A. Leland, President, 312 Sixth Avenue, Des Moines 3, Iowa. Any such notice or demand shall be deemed to have been given or made as of the time of its deposit in the United States post office. After receipt by Iowa Power of the written notice provided for in Section 22 hereof, such notices and demands need not be addressed to the Committee but shall be addressed to the District, care of the office of the Secretary, Electric Building, in Omaha, Nebraska.

SECTION 20. This agreement shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

SECTION 21. Nothing herein contained shall be construed to prevent the liquidation and dissolution of Western Iowa by Iowa Power at any time after the consummation of the purchase of securities provided for herein.

SECTION 22. The Committee, as the Trustee for and as an instrumentality of the District, has declared its intention of transferring to the District all of its net assets, including the proceeds of claims for refund of taxes, whereupon the District will assume the Committee's obligations under this contract, it being understood that such transfer and assumption will be made within a reasonable time after the date of acquisition and the payment of the earned surplus hereinbefore referred to.

It is agreed that when written notice, signed by the Committee and the District, has been given to Iowa Power, that said assets have been transferred to the District and the District has assumed the liabilities of the Committee, all obligations of Iowa Power under this contract will be to the District only, and all obligations of the Committee under this contract will be the obligations of the District, and the Committee shall thereupon be released from any further liability hereunder.

The approval of this contract by the District signifies the agreement of the District to its assuming and fulfilling the obligations of the Committee hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in triplicate by its president or a vice president and its corporate seal to be hereunto affixed

and attested by its secretary or an assistant secretary, there-  
unto duly authorized, all on this 11th day of February, 1949.

OMAHA ELECTRIC COMMITTEE, INC.,

(CORPORATE SEAL)

By T. H. MAENNER  
*President.*

Attest:

W. W. WENSTRAND  
*Assistant Secretary*

IOWA POWER AND LIGHT COMPANY,

(CORPORATE SEAL)

By C. A. LELAND  
*President.*

Attest:

L. E. SLADE  
*Secretary*

Approved this 11 day of February, 1949.

OMAHA PUBLIC POWER DISTRICT,

(CORPORATE SEAL)

By J. M. HARDING  
*President.*

Attest:

T. F. HANLEY  
*Assistant Secretary*

**BALANCE SHEET**  
**WESTERN IOWA POWER COMPANY**

At September 30, 1948

		This Date
ASSETS AND OTHER DEBITS		
Utility Plant	Utility plant—Beginning of year.....	\$3,386,369.46
	Utility plant—Net additions during current year.....	8,034.60
	Total utility plant completed.....	\$3,394,404.06
	Expenditure requisitions—Construction work in progress.....	\$ 414,204.07
	Construction contract advances.....	
	Total construction work in progress.....	\$ 414,204.07
	Total utility plant .....	\$3,808,608.13
Investments and funds	Other physical property.....	
	Investments in associated companies.....	
	Other investments.....	
	Sinking funds.....	
	Miscellaneous special funds.....	
	Total investments and fund accounts.....	
Current and Accrued Assets	Cash .....	\$ 180,644.91
	Special deposits—Interest special deposits.....	
	Working funds .....	1,500.00
	Temporary cash investments.....	
	Notes receivable.....	
	Accounts receivable—Customers .....	125,909.85
	Accounts receivable—Other .....	3,502.30
	Notes receivable from associated companies.....	
	Accounts receivable from associated companies.....	
	Interest and dividends receivable.....	
	Rents receivable.....	
	Material and supplies .....	48,709.67
	Prepaid taxes.....	
	Other prepayments .....	670.13
	Other current and accrued assets.....	464.54
	Total current and accrued assets.....	\$ 361,401.40
Deferred Credits	Unamortized debt discount and expense.....	\$ 3,435.52
	Extraordinary property losses.....	
	Preliminary survey and investigation charges.....	
	Clearing accounts.....	
	Expenditure requisitions—Retirement work in progress.....	15,455.56
	Other work in progress.....	
	Other deferred debits.....	
	Total deferred debits .....	\$ 18,891.08
Cap Stk Exp	Capital stock expense.....	
	Total capital stock expense.....	
Reacq. Cap Stk	Reacquired capital stock—.....	
	Total reacquired capital stock.....	
	Contra assets.....	
	Totals .....	\$4,188,900.61

**BALANCE SHEET**  
**WESTERN IOWA POWER COMPANY**  
 At September 30, 1948

		This Date
<b>LIABILITIES AND OTHER CREDITS</b>		
Capital Stk	Common (Par value) .....	\$ 50,000.00
	Preferred (Par value) .....	
	Preferred (Par value) .....	
	Total capital stock .....	\$ 50,000.00
Debt Long-Term	Bonds (net) .....	\$3,350,000.00
	Advances from associated companies .....	
	Miscellaneous long-term debt .....	
	Total long-term debt .....	\$3,350,000.00
Current and Accrued Liab.	Notes payable .....	
	Accounts payable .....	\$ 96,120.45
	Notes payable to associated companies .....	
	Accounts payable to associated companies .....	
	Dividends declared .....	
	Matured long-term debt .....	
	Matured interest .....	
	Customers' deposits .....	53,011.48
	Taxes accrued .....	153,125.26
	Interest accrued .....	58,943.05
	Preferred dividends accrued .....	
	Other current and accrued liabilities .....	8,092.32
	Total current and accrued liabilities .....	\$ 369,292.56
Deferred Credits	Unamortized premium on debt .....	
	Customers' advances for construction .....	\$ 5,964.99
	Other deferred credits .....	254.12
	Total deferred credits .....	\$ 6,219.11
Reserves	Reserve for property retirement .....	\$ 148,978.01
	Reserve for amortization of limited-term investments .....	4,031.07
	Reserve for amortization of util plant acquisition adjustments .....	
	Reserve for uncollectible accounts .....	4,847.84
	Insurance reserve .....	
	Injuries and damages reserve .....	10,641.03
	Inventory adjustment reserve .....	3,010.83
	Other reserves .....	966.98
	Total reserves .....	\$ 172,475.75
Sur- plus	Contributions in aid of construction .....	\$ 1,770.26
	Contra liabilities .....	
	Capital surplus .....	
	Earned surplus .....	239,142.93
	Total surplus .....	\$ 239,142.93
	Totals .....	<u>\$4,188,900.61</u>



**STATEMENT OF INCOME**  
**WESTERN IOWA POWER COMPANY**  
 Month of September, 1948

12 Mos. Ended Curr. Mo.  
 This Year

Operating revenues .....		\$1,627,208.10
Total operating revenues.....		<u>\$1,627,208.10</u>
Oper Rev Ded	Operating expenses .....	\$1,059,342.98
	Depreciation reserve appropriation .....	
	Amort. of limited term investments .....	1,560.00
	Amort. of elect plant acquis. adjmts .....	
	Retirement reserve appropriation.....	96,000.00
	Payments in lieu of taxes.....	199,181.48
Total operating revenue deductions.....		<u>\$1,356,084.46</u>
Net Operating Revenues .....		<u>\$ 271,123.64</u>
Total Operating Income.....		<u>\$ 271,123.64</u>
Other Income	Interest revenues .....	\$ 582.37
	Misc. non-operating revenues .....	
	Non-operating revenue deductions .....	
	Total other income .....	<u>\$ 582.37</u>
Gross Income .....		<u>\$ 271,706.01</u>
Income Deductions	Interest on revenue bonds .....	
	Interest on other long term debt.....	\$ 128,875.01
	Other interest charges .....	2,864.59
	Int. charged to construction—Cr.....	1,400.34
	Miscellaneous amortization .....	
	Miscellaneous income deductions .....	1,330.75
	Amort of debt discount & expense.....	136.08
Total income deductions .....		<u>\$ 131,806.09</u>
Net Income .....		<u>\$ 139,899.92</u>
Misc. reservations of net income .....		
Balance tfd. to earned surplus.....		<u>\$ 139,899.92</u>

OMAHA PUBLIC POWER DISTRICT

Certified Copy of a Resolution

WHEREAS, the Board of Directors of Omaha Public Power District, by the adoption of Resolution No. 165 on February 11, 1949, approved the action of the Board of Directors of Omaha Electric Committee, Inc. for the sale of the securities of Western Iowa Power Company to Iowa Power and Light Company and authorized the District's Officers to execute its written approval of the same, and

WHEREAS, the detailed contract embodying the terms and conditions of said sale was duly executed by and between Omaha Electric Committee, Inc. and Iowa Power and Light Company and approved by Omaha Public Power District, and duly delivered, and

WHEREAS, Iowa Power and Light Company has on this 14th day of May, 1949, pursuant to Section 4 of said contract, notified Omaha Electric Committee, Inc. in writing that:

(a) It has been granted a satisfactory franchise by the City of Council Bluffs and the same has been duly approved by the voters, as required by the laws of the State of Iowa, and

(b) It has been granted a satisfactory order by the Securities and Exchange Commission, and

(c) It has entered into a satisfactory power contract with Omaha Public Power District,

and requests that this date be fixed as "Date of Acquisition" as defined in Section 5 of said contract, which date of acquisition the District has been advised by Omaha Electric Committee, Inc. is agreeable to it and which date of acquisition is agreeable to the District,

BE IT THEREFORE RESOLVED, that the District pursuant to Section 15 (b) does hereby approve the consummation of the transaction as in said contract provided.

I hereby certify that the foregoing is a true and correct copy of Resolution No. 169 adopted by the Board of Directors of Omaha Public Power District at a meeting held on May 14, 1949.

  
Assistant Secretary

MINUTES OF SPECIAL MEETING OF THE BOARD  
OF DIRECTORS OF WESTERN IOWA POWER COMPANY  
HELD AT TWO O'CLOCK P.M., MAY 14, 1949, AT  
THE OFFICE OF THE COMPANY AT COUNCIL BLUFFS,  
IOWA.

Pursuant to the adjournment of the special meeting of the Board of Directors of Western Iowa Power Company held at the Directors' Room of Omaha Public Power District, Electric Building, Omaha, Nebraska, at 9:00 a.m., May 14, 1949, the meeting reconvened without further notice at 2:00 p.m., May 14, 1949, at the office of the Company in Council Bluffs, Iowa. The following directors were present: Mr. L. E. Slade, Mr. H. B. Hoffhaus, Mr. Geo. C. Huck, Mr. E. W. Cowdry, Mr. R. L. Read, and Mr. Cyrus A. Leland, III, being all of the directors of the Company.

Upon motion of Mr. Read, duly seconded and duly carried by unanimous vote, Mr. L. E. Slade was elected Chairman of the reconvened meeting, and Mr. E. W. Cowdry was elected Secretary of the reconvened meeting and instructed to keep these minutes.

The Chairman then presented to the meeting the written resignation of Mr. T. F. Hanley as Assistant Secretary and Assistant Treasurer of the Company, effective upon acceptance by the Board, and the written resignation of Mr. F. J. Moylan as Assistant Secretary and Assistant Treasurer of the Company, effective upon acceptance by the Board. The resignations were accepted by unanimous vote of the Board.

The Chairman then stated that inasmuch as all the officers of the Company had resigned, and their resignations had been accepted, it was desirable to elect successors to certain of the vacancies so created, and asked for nominations.

Mr. Read nominated Mr. L. E. Slade for the office of President of the Company; Mr. H. B. Hoffhaus for the office of Vice-President; Mr. E. W. Cowdry for the office of Secretary; and Mr. Geo. C. Huck for the office of Treasurer.

There were no further nominations. A vote was taken as to each nominee, and each nominee was unanimously elected; it being provided that each officer should serve without compensation until his respective successor should be elected.

The Chairman then stated that in connection with its application to the Securities and Exchange Commission for authority to purchase Western Iowa Power Company, Iowa Power and Light Company had represented to the Commission that it would cause Western Iowa Power Company to increase the reserve for depreciation carried on the books of this Company, by transferring to such reserve so much of the surplus of this Company as might be necessary to increase such reserve to approximately twenty per cent (20%) of the Company's depreciable utility plant account, all of such accounting entries to be made in accordance with the plan therefor presented to the Securities and Exchange Commission and in accordance with proper accounting practice as determined by Messrs. Arthur Andersen & Co.

Whereupon the following resolutions, on motion duly made by Mr. Read, and seconded by Mr. Leland, and unanimously carried, were adopted:

WHEREAS, this Company is now wholly owned by Iowa Power and Light Company; and

WHEREAS, Iowa Power and Light Company desires to increase the reserve for depreciation carried on the books of this Company;

NOW THEREFORE, BE IT RESOLVED, that so much of the surplus of this Company as is required to increase the reserve for depreciation carried on the books and accounts of this Company, after such reserve has been augmented by adding thereto the amount of historical reserve for depreciation applicable to the properties of this Company on the books of its predecessor companies, to twenty per cent (20%) of the depreciable utility plant account, be and it is hereby transferred and appropriated to the reserve for depreciation of this Company; for the purpose of this resolution the amount of surplus available for such purpose shall be the amount of surplus of the Company at the close of business on May 13, 1949, as found and determined by Messrs. Arthur Andersen & Co. pursuant to the terms of the Agreement, dated February 11, 1949, between Omaha Electric Committee, Inc., and Iowa Power and Light Company; and be it

FURTHER RESOLVED, that the officers of this Company be and they are hereby authorized to cause the appropriate entries to be made in the books of account of this Company to reflect such appropriation of surplus to reserve for depreciation; and be it

FURTHER RESOLVED, that such appropriation of surplus to reserve for depreciation shall in no way affect the obligations of either Iowa Power and Light Company or Omaha Electric Committee, Inc., under the aforesaid Agreement dated February 11, 1949, with respect to the adjustment in the purchase price of all the outstanding securities of this Company to be determined by the amount of the increase or decrease in earned surplus of this Company for the period from September 30, 1948, to the close of business on May 13, 1949.

The Chairman then stated that in connection with its application to the Securities and Exchange Commission for authority to purchase Western Iowa Power Company, Iowa Power had stated that it would cause the liquidation and dissolution of Western Iowa Power Company as soon as practicable after the consummation of the purchase; that the purchase by Iowa Power and Light Company of all of the outstanding securities of Western Iowa Power Company had been consummated that morning, May 14, 1949; that a plan for the liquidation and eventual dissolution of Western Iowa Power Company had been prepared, entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", and dated May 14, 1949; that said plan had been approved and adopted by the Board of Directors of Iowa Power and Light Company at its special meeting held at 9:00 a.m. at the offices of Iowa Power and Light Company in Des Moines, Iowa; and that a copy of said plan had been transmitted to him for presentation to this meeting.

The document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation" was thereupon read and examined by the directors, and after consideration and discussion thereof, the following resolution was moved by Mr. Read and seconded by Mr. Leland and unanimously carried:

BE IT RESOLVED, that the plan of liquidation of Western Iowa Power Company, dated May 14, 1949, and this day approved by the Board of Directors of Iowa Power and Light Company, in words as follows:

## AGREEMENT AND PLAN OF LIQUIDATION

WHEREAS, Iowa Power and Light Company (hereinafter referred to as Iowa Power) is the owner and holder of all the outstanding capital stock of Western Iowa Power Company (hereinafter referred to as Western Iowa), also is the owner and holder of the entire issue of bonds of Western Iowa, aggregating \$3,350,000 in principal amount, issued under and secured by a Mortgage and Deed of Trust dated December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee; and

WHEREAS, Iowa Power is lawfully authorized to acquire, own and operate the utility distribution system now owned and operated by Western Iowa; and

WHEREAS, Iowa Power, being the sole stockholder of Western Iowa, has determined to cause Western Iowa to liquidate and dissolve, in accordance with the plan of liquidation hereinafter set forth; and

WHEREAS, the plan of liquidation has been duly adopted and approved by the unanimous vote of all the issued and outstanding capital stock of Western Iowa at a special stockholder's meeting called and held at the offices of the Company in Council Bluffs, Iowa, on the 14th day of May, 1949, for the purpose of acting upon such plan, and has been approved and adopted by the Board of Directors of Western Iowa at a special meeting duly called and held at the offices of the Company in Council Bluffs, Iowa, this 14th day of May, 1949, and has been approved and adopted by the Board of Directors of Iowa Power at a special meeting duly called and held at the offices of the Company in Des Moines, Iowa, on this 14th day of May, 1949;

NOW, THEREFORE, it is hereby agreed by and between Iowa Power and Western Iowa, as follows:

### PLAN OF LIQUIDATION

1. Western Iowa shall distribute, transfer, assign and convey to Iowa Power, on May 14, 1949, all its property and assets of every kind and nature whatsoever, and wherever situate, including cash, notes, bills and accounts receivable, leases, contracts, franchises, and all other property rights or interests, both tangible and intangible; such property and assets to be received by Iowa Power in full payment of the above-mentioned bonds, aggregating \$3,350,000 in principal amount, and of the accrued unpaid interest thereon, and in complete liquidation, cancellation and redemption of all issued and outstanding shares of the capital stock of Western Iowa, to-wit, 5,000 shares.

2. Western Iowa shall execute and deliver to Iowa Power on May 14, 1949, all deeds, bills of sale, releases, assignments, and other documentary evidence necessary to vest in Iowa Power all the

right, title and interest of Western Iowa in or to said property and assets, and shall subsequently execute and deliver to Iowa Power as of May 14, 1949, such further instruments as may be necessary or desirable to evidence or perfect Iowa Power's title to said property and assets.

3. Upon the transfer to it of the aforesaid properties and assets, Iowa Power shall surrender to the Secretary of Western Iowa a certificate or certificates evidencing the ownership of all the outstanding capital stock of Western Iowa, aggregating 5,000 shares, for cancellation and retirement, and shall surrender to said Secretary the aforesaid bonds aggregating \$3,350,000 in principal amount, as fully paid and for cancellation.

The Secretary of Western Iowa shall forthwith cancel all such stock; and Western Iowa shall forthwith surrender all the aforesaid bonds to the Trustee under the above-mentioned Mortgage and Deed of Trust pursuant to which said bonds were created, issued and secured, and cause said Trustee to cancel and cremate the same, and to deliver to Western Iowa a certificate of such cremation. Western Iowa also shall forthwith request and cause the said Trustee to release the lien of the said Mortgage and Deed of Trust of record, wherever the same may be of record, and to deliver to Iowa Power written evidence of such release.

4. Iowa Power agrees that upon the transfer to it of all the property and assets of Western Iowa on May 14, 1949, it will undertake the operation of the utility properties thus acquired, and that it will assume all obligations of Western Iowa under all executory contracts, unexpired leases, and other undertakings of Western Iowa.

5. Upon the distribution and transfer of its property and assets to Iowa Power, as herein contemplated, Western Iowa shall cease all corporate activities other than such as may be required in order to fully consummate the winding up of its affairs, liquidation and dissolution. The present officers and directors of Western Iowa, or their successors in office, shall remain in office without compensation until such time as the Board of Directors of Western Iowa determines that the corporation shall be dissolved and its charter surrendered.

6. It is agreed by Iowa Power and Western Iowa that the distribution by Western Iowa to Iowa Power on May 14, 1949, of all its property and assets, as herein provided, will accomplish the complete liquidation of Western Iowa Power Company.

7. Western Iowa agrees diligently to proceed to wind up its affairs to the end that the corporation shall be dissolved and its charter surrendered

at the earliest practicable time; and Iowa Power consents that the corporation shall be dissolved at such time as is determined in the discretion of the Board of Directors of Western Iowa.

IOWA POWER AND LIGHT COMPANY,

By \_\_\_\_\_  
Vice-President

WESTERN IOWA POWER COMPANY,

By \_\_\_\_\_  
President

be and it is hereby approved and adopted by the Board of Directors of Western Iowa Power Company subject to the approval thereof at a special stockholder's meeting of Western Iowa Power Company to be called and held for the purpose of acting upon said plan of liquidation; and be it

FURTHER RESOLVED, that the President of Western Iowa Power Company be and he is hereby authorized and directed to call and cause the holding of a special stockholder's meeting of Western Iowa Power Company immediately, for the purpose of acting upon said plan of liquidation.

Upon motion, the meeting was then adjourned to reconvene without notice immediately following the adjournment of the special stockholder's meeting to be held immediately.

\* \* \* \* \*

The meeting reconvened at 2:45 p.m., May 14, 1949, at the office of the Company in Council Bluffs, Iowa. Messrs. Slade Hoffhaus, Huck, Cowdry, Read and Leland, being all of the Directors of the Company, were present.

The Chairman stated that a special stockholder's meeting of Western Iowa Power Company had been called and held at 2:30 p.m. May 14, 1949, at the office of the Company in Council Bluffs, Iowa and that said stockholder's meeting had acted upon the plan of liquidation of Western Iowa Power Company and had adjourned sine die. He submitted to the Board a transcript of the minutes of the stockholder's meeting, evidencing the adoption by the stockholder's meeting of the plan of liquidation of Western Iowa Power Company. He then stated that, inasmuch as the plan of liquidation of Western Iowa Power Company had been approved and adopted by all of the



necessary bodies, it was desirable that the Board should take appropriate action to carry out the provisions thereof.

Thereupon the following resolutions were moved by Mr. Read, seconded by Mr. Leland, and unanimously adopted:

WHEREAS, the plan of liquidation of Western Iowa Power Company, embodied in the document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", dated May 14, 1949, and heretofore approved and adopted by this Board and by the Board of Directors of Iowa Power and Light Company, has now been approved and adopted at a special stockholder's meeting of Western Iowa Power Company; and

WHEREAS, it is desirable that this Board should take action immediately to carry out the provisions of said plan of liquidation;

NOW, THEREFORE, BE IT RESOLVED, that the plan of liquidation of Western Iowa Power Company, embodied in the document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", dated May 14, 1949, be and it is hereby declared to have been duly and lawfully adopted as the plan of liquidation of Western Iowa Power Company; and be it

FURTHER RESOLVED, that the President of this Company be and he is hereby authorized and directed to sign and execute on behalf of this Company the two counterparts of the aforesaid "Agreement and Plan of Liquidation", and to deliver one fully executed counterpart thereof to Iowa Power and Light Company, and to retain one fully executed counterpart thereof in the permanent records of this Company; and be it

FURTHER RESOLVED, that pursuant to and in fulfillment of the aforesaid "Agreement and Plan of Liquidation", all of the property and assets of Western Iowa Power Company of every kind and nature whatsoever, and wherever situate, including cash, notes, bills and accounts receivable, leases, contracts, franchises, and all other property rights or interests, both tangible and intangible, be and they are hereby distributed, transferred, assigned and conveyed to Iowa Power and Light Company in full payment of all of the issued and outstanding First Mortgage Bonds of Western Iowa Power Company, 3 $\frac{1}{2}$ % Series due 1971 and 4 $\frac{1}{2}$ % Series due 1976, aggregating in principal amount \$3,350,000, issued under and secured by a Mortgage and Deed of Trust dated December 2, 1946, executed by Western Iowa Power Company to Edward F. Leary as Trustee; and in full payment of the interest accrued on the above-described bonds since the last interest payment date; and in complete liquidation, cancellation and redemption of all of the issued and outstanding shares of the capital stock of Western Iowa Power Company, to-wit, 5,000 shares; all of such bonds and stock being now owned and held by Iowa Power and Light Company; this resolution to be and become effective immediately upon the delivery and surrender on May 14, 1949, to the Secretary of this Company by Iowa Power and

Light Company of the above-described bonds for cancellation, and of the certificate representing 5,000 shares of the capital stock of this Company for cancellation and retirement; and be it

FURTHER RESOLVED, that upon receipt of the aforesaid bonds by the Secretary of this Company he is hereby authorized and directed to mark the same cancelled and paid, and to deliver the same to Edward F. Leary, Trustee under this Company's Mortgage and Deed of Trust dated December 2, 1946, and to request said Trustee to cremate the same and to deliver to this Company a certificate of cremation, and to procure from said Trustee a duly executed instrument releasing and discharging said Mortgage and Deed of Trust and the lien thereof, and to cause said Mortgage and Deed of Trust to be duly released of record wherever the same has been recorded; and be it

FURTHER RESOLVED, that upon the receipt by the Secretary of this Company of the certificate representing all of the issued and outstanding capital stock of this Company, to-wit, 5,000 shares, he is hereby authorized and directed to cancel and retire such stock as completely liquidated and not to be reissued; and be it

FURTHER RESOLVED, that the President and Secretary of Western Iowa Power Company be and they are hereby authorized, empowered and directed to sign and execute in the name of and on behalf of this Company and under its corporate seal, on May 14, 1949, any and all deeds, bills of sale, assignments, conveyances, and any and all other instruments necessary or desirable to vest in Iowa Power and Light Company all of the right, title and interest of Western Iowa Power Company in or to all of its property and assets, and to deliver the same to Iowa Power and Light Company; and subsequently to May 14, 1949, to execute and deliver to Iowa Power and Light Company dated as of May 14, 1949, any and all such further instruments as may be deemed necessary or desirable to evidence or perfect the right or title of Iowa Power and Light Company in and to said property and assets; and be it

FURTHER RESOLVED, that the officers of this Company be and they are hereby authorized and directed to deliver possession to Iowa Power and Light Company of all of the property and assets of this Company on May 14, 1949, upon the receipt from Iowa Power and Light Company of the aforesaid stock and bonds of this Company; and be it

FURTHER RESOLVED, that it is the intent of these resolutions to cause the complete liquidation of Western Iowa Power Company on May 14, 1949, by the distribution of all of its property and assets to Iowa Power and Light Company in complete cancellation, redemption, liquidation and retirement of all of the outstanding securities of Western Iowa Power Company, and that the officers and directors of this Company be and they hereby are authorized and directed to do all such things and to carry out all such actions as they may deem necessary or desirable in order to carry out such intention; and be it

FURTHER RESOLVED, that upon the liquidation of this Company on May 14, 1949, as authorized and provided for by

these resolutions, Western Iowa Power Company shall cease doing business and terminate all of its corporate activities except such activities as may be necessary in connection with winding up its affairs and its ultimate dissolution.

Upon motion, a fifteen-minute recess was declared in order to permit the officers of the Company to consummate the transactions provided for in the foregoing resolutions. At the expiration of the recess, the Chairman reported to the meeting that the liquidation of the Company had been accomplished in accordance with the plan of liquidation and with the resolutions authorizing the consummation of said plan adopted by the meeting just previous to the recess. Whereupon it was moved by Mr. Read and seconded by Mr. Leland and unanimously carried, that the following resolutions be adopted by the Board of Directors of Western Iowa Power Company:

WHEREAS, Western Iowa Power Company on this 14th day of May, 1949, has been completely liquidated by the distribution, transfer, assignment and conveyance to Iowa Power and Light Company of all of its property and assets in full payment of all of its outstanding bonds and in complete liquidation and cancellation of all of its issued and outstanding capital stock;

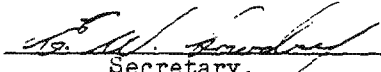
NOW, THEREFORE, BE IT RESOLVED, that Western Iowa Power Company be and it is hereby declared to be and to have become completely liquidated on May 14, 1949, and to have ceased all business activity on said date.

There being no further business, the meeting adjourned.

Certified as correct.

  
Chairman

ATTEST:

  
Secretary.